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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,750	10/11/2001	Michael Ferguson	8576-001-27	7168
54350	7590	04/06/2006	EXAMINER	
RATNERPRESTIA P.O. BOX 980 VALLEY FORGE, PA 19482-0980			NGUYEN, THUKHANH T	
			ART UNIT	PAPER NUMBER

1722

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/973,750	FERGUSON, MICHAEL	
	Examiner	Art Unit	
	Thu Khanh T. Nguyen	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickus et al (4,743,289) in view of Lynam et al (5,557,873).

Mickus et al disclose an apparatus for forming ammonium sulfate fertilizer comprising, a raw material ventilation system (16) having a scrubber (17) for venting flowing air and ammonia from the material before transfer the material into a dryer (19), at which the material is dried and reduced to fine particles (col. 6, lines 1-2), and a pelleting system, or a screening operation (31-35) for screening and producing homogenized pellets (col. 10, lines 17-25 and lines 45-61), wherein the size of the pellets is depending on the changeable crushing weight.

However, Mickus et al fail to disclose that the ventilation system having a filter.

Lynam et al disclose an apparatus for producing a pelletized fertilizer, comprising a venting system including a filter for removing exhaust gas from the system, wherein filter and removal of exhaust gas system is located at the pre-heating station (col. 5, lines 64-66) or at the heating station (col. 7, lines 24-31), wherein the filter is used to remove undesirable by-products from the exhaust gas prior to discharging the gas to the atmosphere (col. 5, lines 59-63).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Mickus et al by providing a filter with the venting system as

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taught by Lynam et al in order to remove undesirable by-product from the exhaust gas prior to discharging the exhaust gas to the atmosphere to prevent contamination to the surrounding area.

In regard to claims 11-12, Mickus et al disclose that the scrubber (17) is a wet scrubber (col. 5, lines 57-59), which is capable of producing moisture air.

In regard to claim 13, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the feeding material, the pellet sizes and the operating conditions to produce pellets at different rates. Further, it would have been also obvious to one of ordinary skill in the art at the time the applicant's invention was made to provide additional pelletizing system if so desired. The court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

In regard to claims 14, Mickus et al further disclose a finishing area ventilation system for cooling and storing the pellets (26, 29; col. 6, lines 1-13).

In regard to claims 15, the dryer is capable of heating the material to different temperature depending on the material and the drying time.

In regard to claim 16, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Mickus by producing pellets having different size depending on the mesh, or the crushing screen is used.

In regard to claim 17, which regarding the actual material in the pellets, Lynam et al disclose that the same fertilizer system can be used for different type of material such as digested sludge, raw sludge, waste water sludge, waste activated sludge or a mixture thereof (col. 5, lines

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12-17). Thus, the same system as taught by Mickus et al would be inherent or would have been obvious in view of Lynam et al for being used with organic matter and humus.

Response to Arguments

3. Applicant's arguments with respect to claims 10-17 have been considered but are moot in view of the new ground(s) of rejection.

Both Mickus et al (4,743,289) and Lynam et al (5,557,873) disclose a system for forming fertilizer pellets. Each reference includes a preheated venting system for remove exhaust gas, wherein Lynam also discloses a filter for recapture undesired product, while Mickus et al disclose a wet scrubber. Both references use a screening system for producing granular and homogenized pellets after the material being dried from the dryer. It would have been obvious to one of ordinary skill in the art to vary the operating conditions depending on the material and the processing time. Further, claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (Emphasis in original)

4. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gupta Yogendra can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN


TIM HEITBRINK
PRIMARY EXAMINER
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4-3-06